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9 RAY LACUESTA JACINTO

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RICHARD W. WIEKING
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U.S. DISTRICT COURT
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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 RAY LACUESTA JACINTO,

14 Plaintiff,

15 v.

16 NELSON & KENNARD, a general
17 partnership, and ROBERT SCOTT
18 KENNARD, individually and in his official
19 capacity,

20 Defendants.

Case No. 07-4401

RS

COMPLAINT

DEMAND FOR JURY TRIAL

15 United States Code § 1692 *et seq.*

21 Plaintiff, RAY LACUESTA JACINTO (hereinafter "Plaintiff"), based on information
22 and belief and investigation of counsel, except for those allegations which pertain to the named
23 Plaintiff or his attorneys (which are alleged on personal knowledge), hereby makes the following
24 allegations:

I. INTRODUCTION

25 1. This is an action for statutory damages, attorney fees and costs brought by an
26 individual consumer for Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C.
27 § 1692, *et seq.* (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive,
28 deceptive and unfair practices.

II. JURISDICTION

29 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. §
30 1337.

1 current business address at: Robert Scott Kennard, Nelson & Kennard, 2180 Harvard Street, Suite
2 160, Sacramento, California 95815-3314. KENNARD is a "debt collector" within the meaning of
3 15 U.S.C. § 1692a(6).

4 9. At all times herein mentioned, each of the Defendants was an officer, director,
5 agent, servant, employee and/or joint venturer of his/her co-defendants, and each of them, and at all
6 said times, each Defendant was acting in the full course and scope of said office, directorship,
7 agency, service, employment and/or joint venture. Any reference hereafter to "Defendants" without
8 further qualification is meant by Plaintiff to refer to each Defendant, and all of them, named above.

9 **VI. FACTUAL ALLEGATIONS**

10 10. On or about November 6, 2004, Plaintiff incurred a financial obligation,
11 namely a Retail Installment Sale Contract for the purchase of a 2005 Dodge Durango from Capitol
12 Dodge, Inc., d/b/a Hartzheim Dodge (hereinafter "the debt"). The debt was incurred primarily for
13 personal, family or household purposes and is therefore a "debt" as that term is defined by 15 U.S.C.
14 § 1692a(5).

15 11. Plaintiff is informed and believes, and thereon alleges that sometime
16 thereafter on a date unknown to the Plaintiff, the debt was sold, assigned or otherwise transferred
17 to Daimlerchrysler Financial Services Americas, LLC.

18 12. Sometime thereafter on a date unknown to Plaintiff, the debt was consigned,
19 placed, or otherwise transferred to Defendants for collection from Plaintiff.

20 13. Thereafter Defendants sent a collection letter (Exhibit "1") to Plaintiff which
21 is a "communication" in an attempt to collect a debt as that term is defined by 15 U.S.C. § 1692a(2).

22 14. The collection letter (Exhibit "1") is dated November 1, 2006.

23 15. The collection letter (Exhibit "1") was the first written communication from
24 Defendants that was received by Plaintiff in connection with the collection of the debt originally
25 owed to Capitol Dodge, Inc., d/b/a Hartzheim Dodge.

26 16. The collection letter (Exhibit "1") states:

27 Unless you notify this office within 30 days after receiving this notice that you
28 dispute the validity of the debt or any portion thereof, this office will assume this
debt is valid. If you notice this office within 30 days from receiving this notice, this

1 office will obtain verification of the debt or obtain a copy of a judgment and mail
2 you a copy of such judgment or verification. If you so request from this office
3 within 30 days after receiving this notice, this office will provide you with the name
4 and address of the original creditor, if different from the current creditor.

5 VII. CLAIMS

6 FAIR DEBT COLLECTION PRACTICES ACT

7 17. Plaintiff brings the first claim for relief against Defendants under the Federal
8 Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692.

9 18. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1
10 through 16 above.

11 19. Plaintiff is a "consumer" as that term is defined by the FDCPA, 15 U.S.C. §
12 1692a(3).

13 20. Defendant, N&K, is a "debt collector" as that term is defined by the FDCPA,
14 15 U.S.C. § 1692a(6).

15 21. Defendant, KENNARD, is a "debt collector" as that term is defined by the
16 FDCPA, 15 U.S.C. § 1692a(6).

17 22. The financial obligation originally owed to Capitol Dodge, Inc., d/b/a
18 Hartzheim Dodge by Plaintiff is a "debt" as that term is defined by the FDCPA, 15 U.S.C. §
19 1692a(5).

20 23. The collection letter (Exhibit "1") described above violates the FDCPA. The
21 violations include, but are not limited to, the following:

22 a. Defendants misrepresented Plaintiff's right to obtain a copy of the
23 debt verification or judgment against him, in violation of 15 U.S.C.
24 §§ 1692e and 1692e(10);

25 b. Defendants misrepresented Plaintiff's right to obtain the name and
26 address of the original creditor, if it is different than the current
27 creditor, in violation of 15 U.S.C. §§ 1692e and 1692e(10);

28 c. Defendants failed to send Plaintiff a written notice containing a
statement that if Plaintiff notifies Defendants *in writing* within the

thirty-day period that the debt, or any portion thereof, is disputed, Defendants would obtain verification of the debt and that a copy of the verification would be mailed to Plaintiff, in violation of 15 U.S.C. § 1692g(a)(4); and,

- d. Defendants failed to send Plaintiff a written notice containing a statement that upon Plaintiff's *written* request, Defendants would provide Plaintiff with the name and address of the original creditor, if different from the current creditor, in violation of 15 U.S.C. § 1692g(a)(5).

24. Defendants' acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

25. As a result of Defendants' violations of the FDCPA, Plaintiff is entitled to an award of statutory damages, costs and reasonable attorneys fees, pursuant to 15 U.S.C. § 1692k.

VIII. REQUEST FOR RELIEF

The Plaintiff requests that this Court:

- a. Assume jurisdiction in this proceeding;
- b. Declare that Defendants' collection letter attached hereto as Exhibit "1" violates the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692e, 1692e(10), 1692g(a)(4) and 1692g(a)(5);
- c. Award Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- d. Award Plaintiff the costs of this action and reasonable attorneys fees pursuant to 15 U.S.C. § 1692k(a)(3); and
- e. Award Plaintiff such other and further relief as may be just and proper.

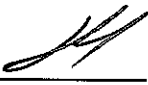
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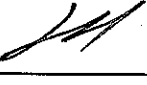
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CONSUMER LAW CENTER, INC.

By: /s/ Fred W. Schwinn 
Fred W. Schwinn, Esq.
Attorney for Plaintiff
RAY LACUESTA JACINTO


CERTIFICATION PURSUANT TO CIVIL L.R. 3-16

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

/s/ Fred W. Schwinn 
Fred W. Schwinn, Esq.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, RAY LACUESTA JACINTO, hereby demands a trial by jury of all triable issues of fact in the above-captioned case.

/s/ Fred W. Schwinn 
Fred W. Schwinn, Esq.

DONALD G. NELSON
ROBERT SCOTT KENNARD
JONATHAN E. AYERS
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FACSIMILE
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November 1, 2006

RAY L JACINTO
2396 Banyan St
Gilroy, California 95020

Re: DAIMLERCHRYSLER FINANCIAL SERVICES AMERICAS, LLC
Account No. 1013144119
Current Balance Due: \$18,359.84
Our File No. 06-09521-0

Dear Ray L Jacinto:

This office represents DAIMLERCHRYSLER FINANCIAL SERVICES AMERICAS, LLC with respect to your above-referenced account. Our client has forwarded your account to this office with instructions that we take appropriate action to effect collection of the above-referenced balances due. If suit is filed, a judgment may be entered against you for the principal, interest and late charges currently due together with actual court costs incurred and reasonable attorney's fees, as provided by law.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office within 30 days from receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you so request from this office within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

Please be advised that the state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8:00 a.m. or after 9:00 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

This firm is a debt collector attempting to collect a debt. Any information obtained will be used for that purpose. If you have any questions or wish to discuss this matter, please contact our office.

Very truly yours,

NELSON & KENNARD

ROBERT SCOTT KENNARD
Attorney at Law

